and who subsequently pays rent with reference to a yearly holding becomes tenant from year to year provided that there are no circumstances to rebut the presumption." *(Halsbury's* Law of England, 4th edition, volume 27, paragraph 178).

The presumption that a person in possession and paying rent on a yearly basis has a tenancy from year to year may be rebutted, for example, by proving from the circumstances and the parties' conduct an intention that the occupier should only be a monthly tenant. "The decisive question is with what intent the rent was received and what was the real intention of both parties." *(Halsbury's* Laws of England, *supra).*

Having considered the facts and the surrounding circumstances deposed in the affidavit of the First Plaintiff, there is an irresistible inference that the First and Second Defendants became monthly tenants of the Plaintiffs after the expiry of the lease. I am also satisfied the notice to quit given by the Plaintiffs was valid and effective.

On the counterclaim, I find that the issues raised are without merit and unjustified. In the case of the Third Defendant, I am satisfied that he has been and remained a trespasser on the Plaintiffs' premises.

Based on the relevant materials before me, I am satisfied, bearing in mind the scope of Order 18, rule 19(1) that this application is, on the undisputed facts and simple question of law, a fit and proper case for me to exercise my discretion by summarily striking out the First, Second and Third Defendants' Defence and the Counterclaim of the First and Second Defendants and entering final Judgment against the three Defendants as prayed in the Statement of Claim and costs.

Application allowed; Defence and Counterclaim struck out.

Solicitors: *Goh Eng Kee & Co.; Yeap & Co.*

SAVINDER KAUR v. THARMA SINGH

[O.C.J. (Shankar J.) December 8, 1984]
[Johore Bahru – Divorce Petition No. 50 of 1981]

Family Law – Divorce – Behaviour of respondent – Petitioner cannot reasonably be expected to live with him – Custody of children – Law Reform (Marriage and Divorce) Act, 1976, ss. 23, 54(b) & 109(2).

In this case the petitioner had commenced proceedings on August 6, 1981 under the Divorce Ordinance, 1952. On the coming into force of the Law Reform (Marriage and Divorce) Act, the petition was presented for disposal under section 54(b) of the Act. To substantiate the breakdown of the marriage it was alleged that the respondent had behaved in such a way that the petitioner could not reasonably be expected to live with him. The petitioner alleged acts of cruelty consisting of drunken bouts in the course of which the respondent would indulge in vulgar abuse of the petitioner and her children and occasionally of minor acts of assault upon the petitioner. The respondent had lost his job and the displacement from his job and his normal domestic environment had created a psychological instability which could account to a large extent for his anti-social behaviour.

Held: (1) on the facts of this case the mental state of the petitioner was such that she cannot be expected to live with the respondent and the decree of dissolution must be made;

(2) custody of the children of the marriage was given to the petitioner with a right of access for the respondent;

(3) no order was made as to maintenance, property or costs.

DIVORCE PETITION.

S.S. Gill for the Petitioner.
Respondent in person.

Cur. Adv. Vult.

Shankar J.: This is a petition for dissolution of a marriage and ancillary relief. The proceedings were commenced under the Divorce Ordinance 1952 on August 6, 1981.

On March 1, 1982, the Law Reform (Marriage and Divorce) Act 1976 (the Act) came into force. By section 109 (2) of the Act all proceedings commenced under the Divorce Ordinance 1952 shall, so far as practicable, be continued under the Act and for this purpose, every petition for divorce is to be deemed to be a petition for divorce under the Act and the grounds set out in the petition are to be deemed to be the principal allegations which it will seek to prove as evidence of the breakdown of the marriage but every such petition, unless the Court otherwise orders, is to be stayed pending reference to a

conciliatory body. Pursuant to this section, this petition has been presented to me for disposal under section 54(b) of the Act. To substantiate the breakdown of the marriage it was alleged that the Respondent had behaved in such a way that the Petitioner cannot reasonably be expected to live with him.

The parties married on January 5, 1969 under Sikh rites and in accordance with the provisions of the Women's Charter 1961 in Singapore.

According to a publication on the Sikh Marriage ceremony by the Sikh Missionary Society U.K., a man and a woman who undertake marriage according to Sikh rites are expected and urged to strive after that ideal state of the most perfect love and devotion when no feeling of separation is possible between the husband and wife. "On the husband's part, this is to be achieved by his love and respect for his wife; his recognition of her individuality and equality as a human being and his life partner. He should have nothing but kindness and consideration for her; and in his role as head of their joint household, he should guide and support her. On the wife's part, complete union is to be achieved also by her love and respect for her husband; her loyalty and support in all his life's aspirations, in the sharing of his joys and sorrows; and the willing harmonising of her mind and her thoughts with his, whether it be in affluence or adversity."

The two are to strive towards perfect and happy union on all planes of life: the physical plane, the material, intellectual and emotional plane and the spiritual plane. Only in spiritual union is complete happiness and satisfaction to be found. A man and woman who live together with no spiritual love for each other are not truly married, according to the Sikh Gurus. Guru Amar Das gave the following advice on marriage:

"The bride should know no other man
Except her husband, so the Guru ordains.
She alone is of good family
She alone shines with light
Who is adorned with the love of her husband.
There is only one way to the heart of the beloved:
To be humble and true and to do his bidding;
Only thus is true union attained.
They are not man and wife who only have physical contact;
Only they are truly wedded who have one spirit in two bodies.
Ask the happy ones by what ways they have won the beloved.
They answer, by sweetness of speech
And the beauty of contentment.
A loaf of dry bread and bare earth for a bed
In the company of the beloved, is full of happiness.
Let humility be the word,
Resignation the offering,
The tongue be the mint of sweet speech.
Adopt these habits, dear sister,
Then you will have him in your power.
Another person's property, another man's wife,
Talking ill of another, poison one's life.
Like the touch of a poisonous snake
Is the touch of another man's wife."

To what extent the Petitioner and the Respondent in this case measured up to the ideal, must be gauged by what happened after they were married. The parties lived and cohabited at various addresses the last of which was Kluang. There were 3 children of the marriage, a girl born on July 15, 1970, another girl born on July 4, 1972, and a son born on October 24, 1977. The Respondent was a Corporal attached to the Royal Malaysian Air Force. He gave evidence at the trial and he was not cross-examined. Therefore his evidence is unchallenged. It appears that the marriage progressed quite normally until he lost his job in 1981 in a promotion exercise. He had been earning about $1,000/- but after he lost his job he could only manage to get employment as a security officer in Singapore at a salary of about $300. During the subsistence of the marriage, he claims to have assisted his wife to open a Bata shop in Scudai which is still running.

Matters appear to have come to a head in August 1981. By that year the Petitioner appears to have taken up residence at No. 74, Main Road, Senai. She claimed in her petition that the Respondent had treated her with cruelty. The particulars in the petition suggest that the acts of cruelty consisted of drunken bouts in the course of which the Respondent would indulge in vulgar abuse of the Petitioner and her children and occasionally of minor acts of assault upon the Petitioner.

After the petition was filed, it would appear that the Respondent continued to live under the same roof as the Petitioner at No. 7, Jalan Dewani, off Jalan Tampoi, Johore. The petition was served on the Respondent at that address on August 6, 1982 but the Respondent is said to have refused to accept service.

On September 25, 1982, April 24, 1983, July 7, 1983, July 11, 1983 and on July 22, 1983, the

Petitioner made police reports in which she detailed various acts of minor assaults upon her person by the Respondent during bouts of drunkenness. The police did not interfere and on September 3, 1983 the Petitioner applied *ex-parte* for an injunction restraining the Respondent from molesting her and her children. By then she had vacated the house they occupied at 23 Jalan Panglima, Senai and moved to another address where she conducted a kindergarten.

Although by then the Respondent did not live with the Petitioner he had taken to sleeping in his car in front of the Petitioner's house.

The *ex-parte* injunction was made on September 3, 1983 but there is no indication in the Court file as to whether it was ever served on the Respondent. On September 25, 1983 the *ex-parte* injunction was converted to an interim injunction to remain until the trial and the order provided that the Respondent should be restrained from watching or besetting the Petitioner at her residence. Thereafter the matter came up for disposal from time to time and eventually there was a full hearing of the petition on November 6, 1984.

In addition to the acts of cruelty alleged in the petition, and in the police reports to which I have already referred, the Petitioner swore that there were incidents of physical threats and assaults in February 1984 when she accused the Respondent of having taken some $200 of her money and again in June 1984 when he threw stones at her window and yet again on November 4, 1984 when he indulged in vulgar abuse of the Petitioner. Taking an overview of the evidence of the Petitioner, I am satisfied that her mental state is such that she cannot reasonably be expected to live with the Respondent. From her point of view the Respondent has behaved in a way which has produced this result. But the Respondent has his own story to tell. There is every indication that all seems to have gone well as long as the Respondent was gainfully employed. The troubles appear to have started after he lost his job. The Petitioner emptied out the matrimonial home in Kluang, leaving the Respondent only with his bag and some personal possessions. Whatever property the Respondent had, appears to have passed from him to the Petitioner. Even after the petition was filed, he says he gave her his entire E.P.F. funds amounting to some $13,700/-. This was done in June 1983. Once out of the house and deprived of the society of his children and family, the Respondent took to the bottle and his downward path has ended up in his present situation where he has no fixed address. He sleeps on five-foot ways, and he is a veritable pauper. To use the Respondent's own language, "I have lost everything and she has taken everything from me. She is more cruel to me by taking everything away from me."

Whereas the Petitioner was represented by Counsel, the Respondent conducted his own case. Having heard him give evidence I am satisfied that he means well, that he still loves his wife and children, but his displacement from his job and his normal domestic environment has created a psychological instability which could account to a large extent for his anti-social behaviour.

Whilst section 23 of the Act does make a passing reference to spouses accepting each other as man and wife, it is a feature of the Act and the rules, that nowhere in it is there any elaboration or emphasis on the duties which spouses owe to each other. For this the Malaysian communities must fall back on the ritual of the traditional marriage.

The present case is only one of the many which have come before me which suggest that the dilution of traditional values has placed a very low threshold on the extent to which petitioning wives are prepared either to accommodate the imperfections of their spouses or to make a determined effort to understand why the problems are occurring and how best they should be resolved without resorting to the severance of the marriage bond.

The language of the Act and the realities of the situation leave this Court no option but to advise the Respondent to harness his reserves of inner strength, pick himself up by his boot straps, and make a fresh start. But so far as the Petitioner is concerned, the decree of dissolution must be made on the evidence which has been presented to me. Despite everything the Respondent has said the Petitioner is adamant in going through with this petition and consequently I now order, albeit with considerable regret, that this marriage has broken down irretrievably and hereby stands dissolved and that the decree *nisi* may be made absolute in 3 months.

Turning now to the ancillary relief claimed, I order that the Petitioner shall have the custody of the children of the marriage but that the Respondent shall have access to the children on two Saturdays in every month. Such access will be at the office of the Petitioner's Solicitor Mr. S.S. Gill at Suite 4, 20th Floor, Tun Abdul Razak Complex, Johore Bahru for 3 hours provided the Respondent first gives advance notice to Mr. Gill or his staff on or before the Wednesday immediately preceding.

I make no order as to maintenance.

As to the prayer that the Respondent should be ordered to transfer his house and the land comprised in Lot No. 1876, H.S.(D) 20198 Mukim Senai/Kulai in the district of Johore Bahru, I also make no order. Although the property is the subject of a written declaration of trust dated the 14th of October 1981, the evidence before me suggests that this document was prepared by the Petitioner with the advantage of legal advice. The Respondent was not independently advised of his rights in the matter. There is a denial by him of the execution of this agreement. The Petitioner's evidence is also to the effect that the gentleman who purported to witness the Respondent's signature on this document was not present at all when she claims that the Respondent signed the document. I am not satisfied as to the legal validity and the enforceability of this alleged declaration of trust.

In the light of the evidence before me I also make no order as to the costs of this petition.

Finally I grant the parties general liberty to apply to the Court on any aspect of the ancillary relief which either party may wish to have from time to time hereafter. Hopefully the situation will improve and consequential orders could be made hereafter which will be for the mutual benefits of the parties and the children of the marriage.

Order accordingly.

Solicitors: *S.S. Gill & Co.*